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ELECTION COMMISSION, INDIA**NOTIFICATION***New Delhi, the 3rd October 1953*

S.R.O. 1905.—Whereas the election of Sheikh Mohd. Abdul Samad, as a member of the Legislative Assembly of the State of Uttar Pradesh, from the Banaras City North constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Shiv Das, s/o Shri Jittu Ram, C-8/72, Mohalla Digiya, Jaitpura Ward, Banaras City and Shri Aditya Narain Sinha, s/o Shri Hanuman Prasad Sinha, House No. C-12/8, Mohalla Lahangpura, Chetganj Ward, Banaras City;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL AT ALLAHABAD**PRESENT:**Sri V. G. Oak, I.C.S.—*Chairman.*Shri N. N. Mukerji—*Member.*Sri B. R. Avasthi—*Member.***ELECTION PETITION No. 243 OF 1952**Shiva Das and another, *Petitioner.**Versus*Sh. Mohd. Abdul Samad & 9 others, *Respondents.***JUDGMENT**

This Election Petition has been filed by two electors challenging the election of Shri Sheikh Mohammad Abdul Samad, respondent No. 1 to the U.P. Legislative Assembly from Banaras City (North) Constituency. The two petitioners are electors in the said Constituency. The ten respondents were candidates for the election. Respondent Nos. 8 to 10 withdrew their candidature; and respondents Nos. 1 to 7 contested the election. As a result of the election, Sri Abdul Samad respondent No. 1 was declared elected. It is alleged that the election of respondent No. 1 is void in view of a number of corrupt practices and irregularities committed by or in the interest of respondent No. 1.

According to the petitioners, Sri Samad's agent Abdul Matin induced one Smt. Hamida to personate two different electors successively. One daily paper the "Chunao" was started and continued under the patronage and cost of respondent No. 1. This paper published false and defamatory statements creating bias against Sri Sahu Bishwanath Prasad *alias* Jhingan Sahu, respondent No. 2. Respondent No. 1 has spent huge sums of money for the election. In particular, Sri Samad paid a sum of Rs. 100 to the Secretary, Congress Provincial Board, U.P., and another sum of Rs. 1,000 to the Banaras City Congress Committee. Sri Samad did not show these sums in his return of election expenses. Sri Samad incurred illegal expenses in inviting Pt. Jawahar Lal Nthru, Pt. Govind Ballabh Pant and other ministers for election meetings. Respondent No. 1 and his agents procured the assistance of presiding officers and their staff in getting undue preference for respondent No. 1. The nomination paper filed by Sri Samad was not accompanied by declarations of appointment of an election agent. There was no declaration as to symbol accompanying the nomination paper. For these reasons his nomination paper was invalid. It was wrongly accepted. Materials used in the election and the procedure adopted for casting and counting of votes were seriously defective. There was surreptitious handling of ballot papers for the advantage of the Congress candidate (respondent No. 1). At Vidyapitha Polling Station there was no roll with the returning officer, and votes cast were not accepted by the presiding officer. The petitioners therefore, prayed that the election of respondent No. 1 be declared void and it may be declared that respondent No. 2 was duly elected in place of respondent No. 1.

The petition was resisted by Sri Abdul Samad, respondent No. 1. He denied that his agent induced Smt. Hamida to personate two electors as alleged. It was denied that the paper 'Chunao' was published under the patronage and cost of respondent No. 1. It was denied that the respondent No. 1 or his agents published false statements, or that they believed such statements to be untrue. It was denied that respondent No. 1 and his workers procured the assistance of presiding officers and their staff. Incurring of illegal expenses was denied. The payment of two sums of Rs. 100 and Rs. 1,000 to the Congress was admitted, but it was pleaded that it was not necessary to show these items in the return of election expenses. It was denied that the sum of Rs. 1,000 was paid for securing Congress ticket. It was denied that there was any defect in the nomination paper. It was denied that there was any defect in the materials used and the procedure adopted in the election. It was denied that the electoral roll for Vidyapitha Polling Station was missing, or that the presiding officer did not accept votes as alleged. It was denied that the commission of the alleged illegal and corrupt practices and irregularities materially affected the result of the election. It was pleaded that respondent No. 1 had given instructions to his agents and workers to avoid the commission of any corrupt or illegal practices. The respondent pleaded that the verification of the election petition was defective, and consequently the petition is liable to be dismissed.

These pleadings gave rise to the following issues:—

ISSUES

1. Did the agent of respondent No. 1 induce Srimati Hamida to personate two electors as alleged in schedule A of the list?
2. Did respondent No. 1 and his agents publish false statements as alleged in paragraph 5(b) of the petition read with section 1 of the application 22A? Did they believe the statements to be untrue?
2. (a) Was the paper "Chunao" published under patronage and cost of respondent No. 1.?
3. Did respondent No. 1 and his agents, workers and partners procure the assistance of Presiding Officers and their staff, as detailed in para. 5(d) of the petition read with section III of application 22-A?
4. Did respondent No. 1 incur illegal expenses as detailed in paragraph 5(e) of the petition?
5. Was respondent No. 1 wrong in not showing in his return of election expenses the item of Rs. 1,000 mentioned in para. 5(c) of the petition and the item of Rs. 100 mentioned in Schedule B of the List?

Did respondent No. 1 pay the sum of Rs. 1,000 to secure the Congress ticket?

6. Was the nomination paper of respondent No. 1 invalid, and was the nomination paper illegally accepted, as alleged in paragraph 8 of the petition?
7. Were the materials used and the procedure adopted in this election defective as alleged in paragraph 10 of the petition?

8. Was the electoral roll for Vidyapitha Road missing, and did the Presiding Officer not accept votes as alleged in paragraph 11 of the petition?

9. Did the commission of the illegal and corrupt practices and other irregularities materially effect the result of the election?

10. Is respondent No. 1 not responsible for the illegal and corrupt practices and irregularities for reasons given in paragraph 38 of the written statement?

11. Is the verification of the petition defective? Is the petition liable to be dismissed on that account?

12. To what relief, if any, are the petitioners entitled?

FINDINGS

At an early stage the petitioners moved two applications for incorporating certain particulars in schedules of the list attached to the election petition. Those amendment applications were dismissed by us by our order 21st November 1952. We are attaching to this judgment a copy of the order dated 21st November 1952 as Annexure 'A'.

Before taking up the specific issues it will be convenient to discuss the background of this election petition. The petition has been filed by two electors. Their prayer is that Sri Jhingan Sahu, respondent No. 2 be declared elected in place of Sri Abdul Samad, respondent No. 1. Thus Sri Jhingan Sahu, respondent No. 2 is virtually the petitioner. He was a candidate on behalf of Jan Sangh. Sri Abdul Samad was nominated by the congress. The election relates to Banaras City (North) constituency. Sri Abdul Samad is not a resident of Banaras City. He is a resident of Bhadohi, which formed part of the former Banaras State. Sri Samad had no connection with Banaras City either through property or business. He is a carpet manufacturer. He is not an old congressman. According to his statement, he joined the Congress in 1948. According to Petitioners' witnesses, Sri Samad did not join the congress till 1951. There was a Praja Mandal in Banaras State, before it merged with Uttar Pradesh in 1949. There were in the Praja Mandal two parties—the congress party and the Praja Party. Sri Samad was a member of the Praja Party. In 1951 Sri Samad sent an application to the U.P. Congress Parliamentary Board, Lucknow, for congress ticket for Gyanpur East (Bhadohi) Constituency. He did not secure congress ticket for that Constituency. Banaras City Congress Committee recommended the name of Sri Girdhari Lal as Congress candidate for Banaras City (North) Constituency. But the Congress Parliamentary Board, Lucknow selected Sri Abdul Alim for election from Banaras City (North) Constituency. Sri Abdul Samad appealed to the Congress Central Parliamentary Board, Delhi. The appeal was accepted; and Sri Samad was selected as the Congress candidate for Banaras City (North) Constituency. In due course he got elected from this Constituency. Sri Abdul Samad received 19684 votes, while Sri Jhingan Sahu received 12262 votes.

According to Sri Abdul Samad, his nomination by the Congress High Command as the candidate for this Constituency annoyed local congressmen. There were two parties in Banaras City Congress Committee Sri Kamala Pati Tripathi, who is now a minister in U.P., and Sri Raghunath Singh, who was elected to Parliament, were leaders of the two factions in Banaras City Congress Committee. Sri Samad belonged to Sri Kamla Pati Tripathi's group. Sri Raghunath Singh's group commanded majority in the City Congress Committee. Sri Samad received no help in the election from the City Congress Committee or from Sri Raghunath Singh's party. On the contrary these people opposed him. The petitioners' witnesses were generally unwilling to admit the existence of such factions in Banaras City Congress Committee. But Ishwar Chand Sinha (P.W. 12) admitted that there was dissatisfaction among City Congress Committee members, who were interested in other candidates. We note that several congressmen of Banaras appeared before us to give evidence for the petitioners against Sri Samad, who was the official congress candidate. There is sufficient evidence to prove the existence of two factions among the congressmen at Banaras.

Issue No. 1.—This issue deals with two separate incidents. Polling for this Constituency took place on 22nd January 1952. Both the incidents took place on the polling day at Muslim High School, Zerhans Polling station. The first incident took place in the morning, while the second incident took place in the afternoon.

Parties are agreed about the occurrence of the morning incident. A woman, Smt. Hamida, appeared before the polling officer at booth No. 4 with an identity slip for voter No. 335. Sri Samad's polling agent Abdul Matin identified Smt.

Hamida. Sri Jhingan Sahu's polling agent Raja Ram challenged the vote. It was urged that the name in the electoral roll was that of a man, while the voter before the polling officer was a woman. Raja Ram's objection was upheld, and the woman was removed from the polling station.

The petitioners produced two witnesses on the point. Hari Shanker Sharma P.W. 2 was working as the polling officer at booth No. 4 of polling station Zerhans. He did not supply a ballot paper to Smt. Hamida in view of Raja Ram's objection. P.W. 14 is Raja Ram, who was working there as Sri Jhingan Sahu's polling agent. Ex. 47 is the list of challenged votes. Ex. 47 contains the order of the Presiding Officer upholding the objection and rejecting the woman's claim as a voter. Sri Samad's polling agent, Abdul Matin is D.W. 8. He admitted having urged before the polling officer that, the disputed entry was for Smt. Hamida.

The incident being admitted, it only remains to consider whether the identification by Abdul Matin amounted to abetment of personation. The charge under consideration is dealt with in sub-section (3) of section 123 of the Representation of the People Act 1951. Section 123(3) states: "The procuring or abetting or attempting to procure by a candidate or his agent or by any other person with the connivance of a candidate or his agent, the application by a person for a ballot paper, in the name of any other person, whether living or dead, or in a fictitious name, or by a person for a ballot paper in his own name, when by reason of the fact that he has already voted in the same or some other constituency, he is not entitled to vote."

Ex. 73 is the electoral roll for polling station Zerhans. The disputed entry appears at serial No. 335. The house number is 5/35. The voter's name is noted as Hamid. Yusuf is written in the column meant for the name of father or husband. 'Male' is noted in the column for sex. The age noted is 40 years. According to the petitioners, the entry relates to a male voter Hamid son of Yusuf. According to Sri Samad, the entry relates to Smt. Hamida wife of Yusuf.

In paragraph 36 of his written statement Sri Samad had expressly pleaded that there was no male elector answering the description given in the electoral roll. Yet the petitioners did not produce any evidence to prove the existence of any such male elector. None of the petitioners' witnesses claims to have met Hamid son of Yusuf. The respondent produced a number of witnesses to prove the identity of Smt. Hamida. Rahmat Ullah D.W. 5 is a resident of Mohalla Manullahpura. He stated that Smt. Hamida, wife of Yusuf, lives in house No. 5/35 in Mohalla Manullahpura. No person by the name of Hamid son of Yusuf ever lived in this Mohalla. Except Smt. Hamida the witness does not know other persons of her house. He has never talked to her. Rahmat Ullah is a man of very ordinary status. Abdul Matin D.W. 8 identified the woman before the polling officer. Abdul Matin said that Smt. Hamida is widow of Yusuf living in house No. 5/35. She is about 40 years old. No Hamid son of Yusuf lives in house No. 5/35 or in this Mohalla. Abdul Matin himself is a resident of Manullahpura. He never visited house No. 5/35. Abdul Matin worked as Sri Samad's polling agent, and is an interested witness. Shambhu Nath Sharma D.W. 10 is a Food Officer in Banaras City. He proved the rationing enquiry form Ex. F. The form contains an entry with respect to Smt. Hamida, widow of Mahammad Yusuf. Her age was noted in Ex. F as 46 years. The declaration was made on 17th March 1952, i.e. after the polling day but before the filing of the election petition.

It is significant that Smt. Hamida is a woman, whereas the disputed entry in Ex. 73, on the face of it, relates to a man. But we find that the sex has been wrongly noted at certain other places in the electoral roll. Two such entries appear at serial Nos. 48 and 49 for Jaitpura Ward, in Polling stations Zerhans. The entry against serial No. 48 is: "Bachchi, Ram Prasad, husband, male." The entry against serial No. 49 is: "Sukhmina, Bhola, husband, male." In both these entries the sex has obviously been wrongly noted in the electoral roll. The voters are females, but their sex has been noted as male. A similar mistake appears to have been made with respect to the disputed entry, against serial No. 335. Hamid might have been printed by mistake for Hamida. The name of Yusuf appears in column No. 4, meant for the name of 'father or husband'. The word 'husband' is expressly noted against a number of entries for female voters. For example, the entry against serial No. 329 is: "Marium Bibi; Rauf, husband." The word 'husband' is not noted against serial No. 335. The word 'male' appears in the column for sex. The age noted is 40 years. The noted age roughly tallies with Smt. Hamida's age.

There are three alternatives for interpreting the entry appearing against serial No. 335, in the electoral roll: (1) The entry relates to a male Hamid, son of Yusuf; (2) the entry relates to Smt. Hamida widow of Yusuf; or (3) the entry relates to a fictitious person. The petitioners made no attempt to trace Hamid son of Yusuf. The respondent produced evidence to the effect that no such man was in existence. Mistakes in the preparation of electoral rolls do occur. But there is a presumption that authorities do not make entries in the electoral roll for fictitious persons. There is some agreement between the description of Smt. Hamida and the description given against serial No. 335. The house number tallies. The voter's name is noted as Hamid in place of Hamida. We find the name Yusuf in the column meant for "father or husband". The age given is correct. There is one important discrepancy. The sex noted is male. In view of all the evidence produced in the case, we are inclined to accept the respondent's contention that Smt. Hamida was the voter described in the electoral roll against serial number 335.

Sri A. P. Pandt appearing for the petitioners urged that it is not open to the Election Tribunal to ignore the actual entry in the electoral roll. He relied upon section 62, R.P. Act, 1951. Section 62(1) states: "No person who is not..... for the time being entered in the electoral roll of any constituency shall be entitled to vote in that constituency." On the other hand Sri Gopi Nath Kunzru appearing for the respondent relied upon sub-rule (3) of rule 32, R.P. Rules, 1951. Rule 23(3) runs thus: "In deciding the right of a person to obtain a ballot paper under this rule, the presiding officer at any polling station may interpret an entry in the electoral roll so as to overlook merely clerical or printing errors, provided that he is satisfied that such person is identical with the elector to whom such entry relates."

It is true that it was not open to Smt. Hamida to obtain a ballot paper, if her name was not on the electoral roll. But it is always open to a person to urge that a certain entry contains clerical or printing errors, and the entry does in fact relate to that person. In 'Muzaffarnagar 1924 case' (Hammond's Election Cases, page 517) one Meer Khan was recorded as a voter in the electoral roll. He died before the date of polling. He left a brother Chhajju, who was not recorded as an elector. Chhajju proceeded to vote under the name of Meer Khan. It was held that, Chhajju had no right to vote, as he was not entered in the electoral roll. In the present case Smt. Hamida did not attempt to vote as Hamid, son of Yusuf. She did not pretend to be a male voter. Everybody at the polling station fully understood that, the person who appeared there was a woman. This was not, therefore, a case of personation. To urge that certain entries in the electoral roll are wrong, will not necessarily amount to personation.

In 'Karnal South Case' (Election Cases by Sen and Poddar, page 438), it was held that if the description of the applicant for a ballot paper differs from that in the electoral roll, the question is one of identity, and his vote is good if he is the identical person.

Learned counsel for the parties cited several authorities on the question whether it is necessary to prove *mens rea* for providing the charge under section 123(3) of the Act. But in view of our finding that the entry against serial No. 335 did in fact relate to Smt. Hamida, the question of *mens rea* loses its importance. All that Abdul Matin did at the polling station was to urge that the disputed entry related to Smt. Hamida, and she should therefore, get a ballot paper. We have found that Abdul Matin was right in his contention. So his conduct does not amount to personation under section 123(3) of the Act.

The broad features of the second incident are also admitted. Smt. Hamida again appeared at Polling Station Zerhans in the afternoon. It was noticed that she had already ink mark on her finger. She was made over to the police. She was prosecuted for having entered the polling station without the permission of the presiding officer, having once been removed in the earlier part of the day. She was fined Rs. 25. Ex. 53 is a copy of the judgment of the criminal court dated 30th December 1952. Parties are not agreed about Abdul Matin's part in the incident. According to the petitioners, Smt. Hamida was brought to the polling station by Abdul Matin. According to the respondent Abdul Matin was not there.

The petitioners produced three witnesses to prove the afternoon incident. Hari Shanker Sharma P.W. 2 was the polling officer for booth No. 4 at polling station Zerhans. The woman brought an identity slip for voter No. 293, who was one Smt. Lailunnissa. The polling officer stated that the same polling agent,

who identified the woman in the morning was behind the woman in the afternoon. According to petitioners' witnesses Smt. Hamida appeared in the afternoon with 'burqa'. According to the respondent's evidence Smt. Hamida did not wear a 'Burqa' in the afternoon. The petitioners' second witness on the point is Sri Shiva Prasad Varma P.W. 6. He is Manager and personal assistant of Raja Baldeo Das Birla. He is an honorary First Class Special Magistrate. It is true that the witness is a man of status. But he had no special reason for visiting polling stations Zerhans. He was not a voter there. The petitioners' third witness for this incident is Raja Ram P.W. 14. He was Sri Jhingan Sahu's polling agent. He is an interested witness. Raja Ram's statement suggests that he raised his objection about the identity of the voter before it was noticed that the woman carried ink mark on her finger. This fact supports the respondent's version that the woman did not then carry 'burqa'. Raja Ram admits that Abdul Matin did not sign any where in token of identification of the female voter. Raja Ram did not mention Sri Abdul Samad's presence in the written report given by Raja Ram to the presiding officer about the second incident. But now Raja Ram says that Sri Abdul Samad was present at the time of the afternoon incident. Raja Ram says that he did not know that woman from before. And yet he raised an objection about her identity. Raja Ram was arrested at another polling station Musa Khand.

The respondent produced four witnesses to prove that Abdul Matin was not responsible for the afternoon incident. Hafizullah D.W. 7 stated that Abdul Matin was at polling station Zerhans till midday only. Hafizullah was working as Sri Samad's polling agent, and is an interested witness. Abdul Matin D.W. 8 stated that he was not present at the polling station in the afternoon. He appeared as a witness in the criminal case against Smt. Hamida. Abdul Matin stated before the criminal court also that he was not present during the afternoon incident. Abdul Matin is also an interested witness. Mohammad Ayub D.W. 9 deposed that he worked at polling station Zerhans from 1 to 5 p.m. He did not identify the woman, who created sensation in the afternoon. Mohammad Ayub is a graduate, and is a member of Banaras Municipal Board. Admittedly, he helped Sri Abdul Samad in the election, and worked as his polling agent. Mohammad Ayub is an interested witness. Respondent's last witness on this point is Ram Naresh Singh D.W. 11. He was on election duty at polling station Zerhans as Assistant to the Presiding Officer. He stated that no Congress agent was present at the time of the dispute in the afternoon. The witness said that Jan Sangh agent alone was present during the afternoon incident, Ram Naresh Singh was not appointed polling officer for a specific booth. The evidence of Ram Naresh Singh on some details is vague. But he is an independent witness.

Sri Dharma Murti Varma was the presiding officer at polling station Zerhans. He is now dead. Ex. G is a copy of the statement given by him before the police during investigation of the case against Smt. Hamida. It is noted in Ex. G that, the woman carried a card bearing another name, which was not verified by the Congress agent. It is doubtful whether the statement made by Sri Dharma Murti Varma before the police is admissible in evidence under section 32 of the Evidence Act as urged by Sri Kunzru.

It is to be noted that Smt. Hamida was not prosecuted before the criminal court on the charge of personation. She was convicted for having entered the polling station after having been removed from there before. In view of the statements of Abdul Matin and other defence it is doubtful whether Abdul Matin was present during the afternoon incident at all. Even if it is assumed that Abdul Matin was then present there, it has not been proved that he identified Smt. Hamida as Smt. Lailunnissa. All that Raja Ram P.W. 14 stated against Abdul Matin is that Abdul Matin accompanied the woman, and objected to the removal of her 'burqa'. Now forcible removal of the 'burqa' worn by a parda-nashion woman in a public place is a serious matter. Abdul Matin's objection to such removal of the 'burqa' can easily be understood. It appears that Shrimati Hamida was then carrying the identity slip Ex. 72. Ex. 72 mentions elector No. 293. The card bears the Congress symbol of a pair of bullocks. Names of Sri Abdul Samad and Sri Raghunath Singh were printed on two sides of the picture. Ex. 72 appears to have been issued on behalf of the Congress candidate. But we do not know how Ex. 72 reached Smt. Hamida's hands. It is to be remembered that the card bears the name of Sri Raghunath Singh in addition to Sri Abdul Samad's name. Sri Raghunath Singh was the Congress candidate for Parliament. It cannot be presumed that the card must have been supplied to Smt. Hamida by Abdul Matin. It may be that, Smt. Hamida was guilty of personation in the afternoon incident. But it has not been shown that Abdul Matin abetted such personation. We hold that the petitioners have failed to

prove that the agent of respondent No. 1 induced Smt. Hamida to personate two electors as alleged.

Issue No. 2.—The petitioners produced several witnesses to connect Sri Samad with the publication of the journal 'Chunao'. The petitioners' first witness on the point is Suraj Nath Singh P.W. 3. He said that he has been working in the congress for the last 25 years. Even now he is an active congress member. He said that he worked for Sri Abdul Samad in the last election. He worked as Sri Samad's polling agent at Jaitpura Ward. Suraj Nath Singh said that Sri Samad bore the expenses of Chunao paper. Suraj Nath Singh produced one paper, which should ordinarily have been in the congress office. He explained that the paper remained with him through inadvertence. He permitted Shiva Das petitioner to obtain a photograph of the paper. In cross-examination Suraj Nath Singh admitted that Sri Samad did not spend any money towards 'Chunao' paper in the presence of the witness. Sri Samad denied that Suraj Nath Singh ever worked for him in the election. Sri Samad said that Suraj Nath Singh was working for Sri Jhingan Sahu. Ex. 2 is a polling agent form in the name of Suraj Nath Singh. Sri Samad admitted his signature on the polling agent form Ex. 2. His explanation was that he handed over a few signed blank forms to Sri Raghunath Singh. Suraj Nath Singh might have utilized one of these signed blank forms. Suraj Nath Singh appears to have helped Shiva Das petitioner in preparing this case against Sri Samad.

Someshwar P.W. 4 stated that he is the Secretary of Newspapers Distributors' Association. He used to distribute 'Chunao' paper. He distributed the paper at the instance of Sri Abdul Samad. He said that Sri Samad supplied the paper to him free of cost, but Someshwar charged the public at the rate of one pice per copy. That was the price printed on the paper. This was an unusual method of distributing election pamphlets. In examination-in-chief Someshwar said that Sri Samad asked him in the election office to distribute the paper. But in cross-examination Someshwar said that the talk took place at his shop in Chowk. Baijnath Prasad P.W. 5 keeps a cycle store in Nawapura, Banaras. He said that 'Chunao' paper was published at Sri Samad's expense, and for his benefit. His explanation for visiting Sri Samad's election office several times was that, his relation Raj Narain Lal was Sri Samad's secretary. Raj Narain Lal appeared as D.W. 4. He said that he has got no relative by the name of Brijnath Prasad doing business in cycles. Baijnath Prasad mentioned payment of a sum of Rs. 2,000 by Sri Samad to Sri Bharati who was editor of 'Chunao'. Baijnath Prasad said that Sharman was also present there. But Sharman, who appeared as D.W. 24, denied any such payment by Sri Samad. Sri Shiva Pd. Varma P.W. 6 merely said that many people supported 'Chunao'. This statement does not show that Sri Samad had any specific connection with the publication of the paper. Sri Gyanchand P.W. 8 is Vice President of the City Congress Committee. He said that he used to receive five copies of 'Chunao' from the election office at Bulanala. The witness does not know from what place the paper was distributed. Ram Ji Das P.W. 9 stated that 'Chunao' was published at Sri Samad's expense. The editor Sri Bharati is not a man of much status. Ram Ji Das was manager of another journal, "The Congress Weekly." "Congress Weekly" and "Chunao" were both printed at Shivaram Press. This witness mentions the payment of two sums of Rs. 2,000 and Rs. 1,000 by Sri Samad to the editor Sri Madho Misra *alias* M. Bharati. The witness mentioned these payments in cross-examination. The question of publication of Chunao was raised in paragraph 5(b) of the election petition. Payment of these sums of Rs. 2,000 and Rs. 1,000 to the editor, were not mentioned in paragraph 5(b) of the petition or in the schedules attached to the petition. An annexure giving a long list of election expenses was attached to the petitioners' application No. 22-A, dated 1st December 1952. This part of the annexure to application No. 22-A was disallowed by the Tribunal. Now Ram Ji Das is in service of a firm which publishes time table in Hindi. Ghulam Abbas P.W. 13 is a resident of Mohalla Doshipura. He is Mukhiya of this Mohalla. He stated that he used to get 'Chunao' paper from Sri Samad's election office at Bara Bazar. The witness distributed the paper.

The last witness for the petitioners is Fazlur Rehman Qureshi P.W. 15. He is a resident of Bhadohi. He stated that he helped Sri Samad throughout the election. Seventy five copies of 'Chunao' paper used to arrive at the election office at Sikraul Ward for free distribution. Formerly Qureshi was in Municipal Board service as Octroi Superintendent. At first he admitted that he was dismissed from Municipal service. Then he said that Government converted the order of dismissal into an order of removal. Qureshi admits having borrowed Rs. 350 from Sri Samad. Sri Samad has filed a civil suit against Qureshi at Gyanpur. That suit is still pending. The file of the civil suit has been

produced before this Tribunal. In that suit Qureshi has filed a note Ex. 48, dated 10th February 1952. The note purports to have been signed by Sri Samad. Bachchan is an *alias* for Qureshi. The note Ex. 48 runs thus: "Mr. Bachchan Mian, I am obliged to you for all your work and labour for me. The details of sums spent for me for Rs. 407-5-0 is thankfully acknowledged in full payment of the loans taken by you and I further promise that I will pay you your remuneration for the period of your work for which you should not worry. I hope this will satisfy you so far as the matter of loan is concerned." According to Qureshi Ex. 48 bears Sri Samad's signature. Raj Narain Lal D.W. 4 stated that Ex. 48 does not bear Sri Samad's signature. Qureshi and Raj Narain Lal are both interested witnesses. It is true that there is much resemblance between the disputed signature on Ex. 48 and Sri Samad's admitted signature appearing on the plaint of the suit. But in the absence of any independent evidence it is difficult to say whether the signature appearing on Ex. 48 is genuine. If Ex. 48 is held to be a genuine document it would serve as a defence in the suit brought by Sri Samad against Qureshi. Qureshi is a man of dubious character. He is interested in supporting a theory which would be helpful to him in the civil suit. Fazlur Rehman Qureshi's evidence is not reliable.

Sri Samad also produced a large number of witnesses in defence. Suresh Chandra Joshi D.W. 1 is a journalist. He is a correspondent for the Leader, Hindustan Times and other papers. He stated that Sri Madho Misra *alias* M. Bharati brought out 'Chunao'. The witness thinks that Sri Abdul Samad had no hand in bringing out the paper. The witness has no personal knowledge about the management of the journal. Ajodhya Prasad D.W. 2 and Sahadeo Prasad D.W. 3 are two newspaper hawkers. They both said that they used to get 'Chunao' paper from Shiva Ram Press upon payment. The witnesses did not see free distribution of 'Chunao' paper. Ajodhya Prasad admitted that Someshwar P.W. 4 is the Secretary of the Newspapers Vendors' Association. Abdul Moghni D.W. 6 stated that he worked at Sri Samad's election office at Bari Bazar. His office did not receive any Hindi journal for free distribution from Sri Samad's main election office, at Bula Nala. Admittedly Abdul Moghni helped Sri Samad in election. He is an interested witness. He says that he never saw 'Chunao' paper. Hafiz Ullah D.W. 7 stated that Sri Samad had no hand in bringing out 'Chunao' paper. Hafiz Ullah was Sri Samad's polling agent and is an interested witness. Mohammad Ayub D.W. 9 also said that Sri Samad had no hand in the management of 'Chunao' journal. Mohammad Ayub helped Sri Samad in the election, and is an interested witness. Jai Singh D.W. 13 deposed that 'Chunao' paper was not supplied to the office in Sikraul Ward from the main election office at Bula Nala. Jai Singh also worked for Sri Samad in the election.

Shyam Sunder Sharma D.W. 14 stated that he was in charge of Sri Samad's central election office at Bulanala in Banaras City. The witness said that Sri Samad had no hand in publication of 'Chunao' paper. At one time Shyam Sunder Sharma was Office Secretary of the City Congress Committee. He was removed from that post. Sharma stated that Sri Samad's Munim Ramdeo used to pay expenses on behalf of Sri Samad. Ram Deo and the account books maintained by him at Bulanala office were not produced before the Tribunal. One of the witnesses produced by the petitioners on the question of publication of 'Chunao' is Ram Ji Das, P.W. 9. Ram Pyare Tripathi D.W. 15 said that Ram Ji Das was an ordinary worker in the staff of the 'Congress Weekly'. Tripathi himself is its editor, publisher, printer and proprietor. Tripathi admitted that in the issue of the 'Congress Weekly', dated 8th February 1952, Ram Ji Das was referred to as the managing editor. P. K. Sharman D.W. 24 said that he was in charge of Sri Samad's election work at Banaras. Sharman said that Sri Samad had no hand in the publication of 'Chunao' paper. Sharman is the personal secretary of Sri Kamalapati Tripathi Minister. Admittedly Sri Samad belongs to the group of Sri Kamalapati Tripathi. Although Sharman claims to have been in charge of Sri Samad's election work, Sharman says that no expense was ever incurred through him. Accounts were kept by Ramdeo Munim. It was noticed that Sharman was sitting in the court room and writing out a note Ex. 71, while a witness for the petitioners was being cross-examined. This note Ex. 71 suggests that Sharman was helping in the cross-examination of the petitioners' witness. Sharman is obviously an interested witness. Some witnesses for the petitioners admitted the connection of Shyam Sunder Sharma and P. K. Sharman with Sri Samad's election office at Bulanala. So the evidence of these two witnesses is of some importance.

The most important witness on the question of publication of 'Chunao' is Sri Madho Bharti *alias* M. Bharati D.W. 25. He said that he was the editor,

printer and publisher of 'Chunao' paper. At the foot of every issue of 'Chunao' it was mentioned that M. Bharati was the Chief Editor, printer and publisher. He said that Sri Samad had no hand in publishing the paper. Sri Samad or his office never purchased the paper from the editor. Sri Bharati stated that his paper supported the Congress. The paper contained much matter about Sri Sampurna Nand, a little about Sri Raghunath Singh and very little about Sri Samad. Sri Bharati alone was responsible for the writing, which appeared in the paper. Sri Bharati said that he paid Rs. 650 as income-tax this year. This statement was challenged on behalf of the petitioners. So Sri Bharati filed a receipt to prove his payment of Rs. 650 as income-tax. He said that he also carries on timber business. His knowledge about timber business appears meagre. He said that he kept an account of income and expenditure of 'Chunao'. But the accounts were not produced before the Tribunal. He said that the paper 'Chunao' did not show either profit or loss. Sri Bharati admitted that he wrote against Sri Jhingan Sahu and canvassed for Sri Samad. The paper was started on 15th December 1951. Its publication ceased on 22nd January 1952. Obviously the paper was brought out for election purposes only. Polling in Banaras City (North) Constituency took place on 22nd January 1952. Sri Bharati said that in 1952 he remained in two jails. But he does not remember the two places.

The last defence witness D.W. 26 is Sri Abdul Samad, respondent. He said that he had no hand in publishing 'Chunao' paper. He denied having made any payment for the publication of the paper, or that he got the paper distributed.

'Chunao' journal was published for thirty-eight days only. Most of these 38 issues are on the record. They are Exs. 11 to 37. These issues of 'Chunao' contain intrinsic evidence to prove that the paper was not published exclusively or mainly for the benefit of Sri Abdul Samad. According to the petitioners, Sri Samad paid a sum of Rs. 2,000 to the Editor on 7th December 1951. The first issue of 'Chunao' came out on 15th December 1951. The headline of the first issue Ex. 11 is: "Enquiry through Hon'ble Sri Sampurna Nand." Ex. 11 contains only a minor reference to Sri Samad, candidate. If 'Chunao' was being financed by Sri Samad, we would expect some strong reference about Sri Samad's candidature—at least in the first few issues. The different issues of 'Chunao' contained much criticism of Sri Jhingan Sahu, who was the Jan Sangh candidate. Since Sri Jhingan Sahu and Sri Samad were rival candidates, criticism of Sri Jhingan Sahu operated as indirect canvassing for Sri Samad. Certain issues of the paper contained direct canvassing for Sri Samad. A number of issues of 'Chunao' contained the following headline: "A vote for the Congress means a vote for Nehru; a vote for Nehru means a vote for democracy." In the issue dated 19th January 1952 there was an appeal for voting for Sri Sampurna Nand. The last three issues dated the 20th, 21st and 22nd of January 1952 contained appeals for voting for the three Congress candidates, Sri Sampurnanand, Sri Raghunath Singh and Sri Abdul Samad, for the parliamentary and two Assembly Constituencies. Sri Raghunath Singh's photograph was published in the issue dated 8th January 1952. A large photograph of Sri Sampurnanand appeared in the last issue dated 22nd January 1952. Sri Abdul Samad's photograph was not published in any issue of 'Chunao'. It, therefore, appears that the publisher of the paper was interested in Congress candidates in general, and not in Sri Samad in particular.

The publication of 'Chunao' is said to be a major corrupt practice under section 123(5) R.P. Act, 1951. Section 123(5) runs thus: "The publication by a candidate or his agent or by any other person with the connivance of the candidate or his agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature or withdrawal of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election." It is to be noted that, for proving a charge under section 123(5) it is necessary to show that the statement in question is false. Further the statement is either in relation to the personal character or conduct of a candidate, or in relation to the candidature or withdrawal of the candidate.

Now, we proceed to examine the passages in 'Chunao', which are said to be defamatory and false. The first issue dated 15th December 1951 mentioned that there was a serious charge against Sri Jhingan Sahu. Details of the serious charge were not given. Ex. 13 dated 20th December 1951 contained the following news item: "Jhingan Sahu will withdraw in favour of Sri Samad. Jhingan Sahu being out of the field, Kamala Kar Chaube alone is now left against the Congress candidate....." It is not clear from the news item whether the writer wished to convey that Sri Jhingan Sahu was going to withdraw or had

already withdrawn. Although this election petition has been filed in the interest of Sri Jhingan Sahu, he did not appear in the witness box. We do not know whether he was contemplating withdrawal from the contest about the 20th of December 1951. One cannot therefore, be sure that the news item appearing in Ex. 13 was false. In Ex. 14 dated 19th December 1951 it was said that those eunuchs had elected Jhingan Sahu as their leader. In this passage Jan Sangh members were referred to as eunuchs. The language is no doubt filthy. But there was no reference to Sri Jhingan Sahu's personal character. Sri A. P. Pande read out a passage appearing in column 2 of Ex. 20, dated 25th December 1951. This passage was not mentioned in the list of particulars given in the application No. 22-A. So this passage may be left out of consideration. Ex. 22 dated 1st January 1952 contained a news that a dancing girl was employed for collecting votes for Sri Jhingan Sahu. We have no information whether that news is true or false. In Ex. 24, dated 4th January 1952 it was stated that Sri Jhingan Sahu was going to lose, and Sri Samad's success was certain. No objection can be taken to such forecasts. That forecast turned out to be true. In some passages Jan Sangh workers have been called monkies. The language may be objectionable but there was no reference to the personal character of Sri Jhingan Sahu.

The petitioners strongly relied upon a passage appearing in Ex. 36 dated 21st January 1952. The following matter appeared at the foot of page 1 of Ex. 36:

"Kya Banaras ki Janata in ko rote degi? Banaras ki Janata ko yeh yad rakhna chahiye ki Nehru Ji ko bhi mar dalne ki bat kahne wale isi Jan Sangh ke Ummidwar uttari chhetra se Jhingan Sav hain, aur dakchhini chhetra se Kaliya hain."

Sri A. P. Pande contended that the passage suggested that Sri Jhingan Sahu was likely to murder Pandit Nehru. Gyan Chand P.W. 8 stated that Sri Jhingan Sahu is a respectable man, and he was not likely to attempt to murder Pt. Nehru. The sentence under consideration is capable of two interpretations. One interpretation is that Jan Sangh leaders were talking about killing Pt. Nehru, and Sri Jhingan Sahu was a candidate on behalf of that Jan Sangh. The second interpretation is that, Sri Jhingan Sahu was talking about killing Pt. Nehru. The previous issue Ex. 35 dated 20th January 1952 contained a headline to the effect that a Jan Sangh leader was openly preaching the murder of Pt. Nehru. A similar headline appeared in Ex. 36 dated 21st January 1952. At the top of page 1 there appeared a news item to the effect that a certain Jan Sangh speaker said in a meeting that Pt. Nehru and other Congress leader would be killed just as Godse assassinated Gandhi Ji and a Mussalman murdered Liaqat Ali. When we read the passage in dispute in continuation of the news item appearing at the top of Ex. 36, it appears that the passage under consideration conveyed the idea that Jan Sangh leaders were contemplating the murder of Pt. Nehru, and Sri Jhingan Sahu was a candidate on behalf of such a party. The passage did not suggest that Sri Jhingan Sahu was personally contemplating such murder.

We have seen that the paper 'Chunao' contained some matter in support of Sri Samad's candidature. The question for consideration is whether the publisher of the journal was Sri Samad's agent. The term 'agent' has been defined in section 79 R.P. Act 1951: "Agent includes an election agent, a polling agent and a counting agent, and, any person who on the trial of an election petition, or of an offence with respect to any election, is held to have acted as an agent in connection with the election with the knowledge or consent of the candidate." In 'Amritsar City case' (Indian Election cases by Sen and Poddar, page 34) it was held (at page 43) that "the law of agency in elections goes much further than the ordinary law of principal and agent. A candidate is responsible generally for the actions of those who to his knowledge, for the purposes of promoting an election, canvass and do such other things as may tend to promote his election, provided that the candidate or his authorised agent has reasonable knowledge that these persons are so acting with that object." In 'Bihar and Orissa Landholders' Constituency case' (Indian Election Cases by Sen and Poddar, page 129) a journal 'Indian Nation' was supporting the candidature of the respondent as against that of the petitioner. It was held that the editor, printer and publisher of the journal were not acting as agents of the respondent.

In the present case the paper 'Chunao' was published for a short period of 38 days. The paper published some matter in support of Sri Samad respondent. But the paper was interested in Congress candidates in general. The paper appeared in Hindi. Sri Samad says that he knows very little Hindi. His agent Shyam Sunder Sharma used to read this paper. After examining the contents of this journal and other evidence produced by the parties, we are not satisfied that

the paper 'Chunao' was published under patronage or cost of respondent No. 1. Further it has not been proved that the statements which appeared in the paper from time to time were either false or cast aspersion upon Sri Jhingan Sahu's personal character or conduct. It has not been shown that Sri Samad or his agents believed such statements to be untrue.

Issue No. 3.—Sri A. P. Pande did not seriously press this issue. There is no evidence to show that, Sri Samad or his agents procured the assistance of the Presiding officers or their staff. This issue is decided against the petitioners.

Issue No. 5.—Two items of payment which have not been shown in the return of election expenses are to be considered under this issue. Payment of both the items has been admitted by respondent No. 1. The first item is of Rs. 100. Sri Samad admitted that he sent Rs. 100 to the Congress Parliamentary Board, Lucknow, along with his application for congress ticket. The learned counsel for the parties cited conflicting decisions of different Election Tribunals on the question whether such payment made for securing congress ticket ought to be shown in the return of election expenses. But in view of the special circumstances of the present case, it seems unnecessary to discuss those decisions. Sri Samad stated that he originally applied for congress ticket for Gyanpur (East) Constituency. In that attempt he failed. Subsequently he managed to obtain congress ticket for Banaras City (North) Constituency. This evidence was not challenged on behalf of the petitioners. It thus appears that the payment of Rs. 100 was made by Sri Samad in connection with his attempt for getting elected from Gyanpur East Constituency. It may be that it would have been necessary to mention this payment of Rs. 100 in the return of election expenses, if Sri Samad had stood for election from Gyanpur (East) Constituency. But that payment of Rs. 100 had no direct connection with the election from Banaras City (North) Constituency. There was, therefore, no need to show that expenditure of Rs. 100 in the return of election expenses relating to Banaras City (North) Constituency.

The next item is of Rs. 1,000. Sri Samad in his deposition mentioned several such payments. On 23rd April 1951 he paid Rs. 1,001 to the District Congress Committee, Banaras. On 12th September 1951 he contributed Rs. 1,000 to Jaunpur Congress Committee. Finally he paid Rs. 1,000 to Banaras City Congress Committee on 12th December 1951. Paragraph 5(c) of the election petition mentions payment of one sum of Rupees one thousand. The date of payment was not mentioned in the petition, but it was stated there that the sum was paid to Banaras City Congress Committee. We may, therefore, take it that the reference in the election petition was to the sum of Rs. 1,000 paid by Sri Samad on 12th December 1951.

According to the petitioners this payment was election expense. According to Sri Samad this money was paid to the congress as general help. It is common ground that a letter Ex. 7 was sent to the congress candidates by the City Congress Committee. Each of the three congress candidates, Sri Sampurna Nand, Sri Raghu-nath Singh and Sri Abdul Samad, was requested to contribute Rs. 1,000 for election work. Ex. 7 is dated 1st December 1951. It appears to have reached Sri Samad on 3rd December 1951. Sri Samad's case is that in view of the hostile attitude taken up by the City Congress Committee, he was not prepared to contribute anything to the Congress Committee, towards election expenses. He stated that he received another letter Ex. A from the City Congress Committee. Ex. A was dated 2nd December 1951, and was addressed to Sri Abdul Samad alone. The letter ran thus: "Two letters were sent to you from this office on 28th November 1951, and 1st December 1951. But you have not sent money yet. If you do not wish to pay towards election expenses, you may kindly contribute something to the Congress Office and its work by way of help." After receiving this letter Ex. A Sri Samad paid the City Congress Committee a sum of Rs. 1,000 by a cheque. Ex. B is the receipt dated 12th December 1951. The petitioners suggested that the letter Ex. A was subsequently fabricated. It is true that the paper of Ex. A looks cleaner than the paper of Ex. 7. But this fact is not sufficient for holding that Ex. A is a forged document. Both these letters appear on the printed letter paper of Banaras City Congress Committee. The signature at the foot of the two letters tally. Ex. A appears to be genuine. The request contained in Ex. A was that Sri Samad might contribute to the congress office as help. In the receipt Ex. B it was noted that he money was being paid as 'help (donation to City Congress Committee)'. In view of the contents of the letter Ex. A and the receipt Ex. B we may accept Sri Samad's statement that he did not wish to contribute to the congress towards election expenses, and that he donated the sum of Rs. 1,000 on 12th December 1951 by way of general help. It is to be noted that the date of payment was between the date of nomination and the date of polling. The election campaign must have been in full swing in the middle of December, 1951. It may be that at the time of payment Sri Samad had an eye on the election. But the fact remains that the payment was actually made as help and donation to the City Congress Committee, and not towards election expenses.

In 'Ferozepore Case' (Gazette of India 184 dated 16th August 1953, page 2367) the respondent was selected by the Congress Committee on 11th November 1951. He paid a sum of Rs. 500 to the District Congress Committee on 27th November 1951. It was held that it might be that the donation was not actuated by altruistic or charitable motives. But the fact remained that it had not been shown that the payment of donation was made as an election expenditure. The facts of the present case are similar. Sri Samad obtained congress nomination towards the end of November 1951. The payment under consideration was made on 12th December 1951 several days after the nomination. The payment was made as general donation. This payment cannot, therefore, be treated as election expenditure. It was not necessary for respondent No. 1 to show this payment of Rs. 1,000 in his return of election expenses. Since this payment was made long after Sri Samad had obtained the congress ticket, it cannot be said that he paid this sum of Rs. 1,000 to secure the congress ticket as alleged by the petitioners.

Issue No. 4.—This issue has been framed with reference to paragraph 5(e) of the election petition. This paragraph makes a reference to section 125 R.P. Act 1951. But Sri A. P. Pande made no serious attempt to bring the facts mentioned in paragraph 5(e) under section 125 of the Act. He, however, relied upon sub-sections (7) and (8) of section 123 of the Act.

It was stated in paragraph 5(e) of the petition that respondent No. 1 incurred illegal expenses in inviting Pt. Jawaharlal Nehru and Pt. Govind Ballabh Pant at election meetings. It is common ground that Pt. Jawaharlal Nehru and Pt. Govind Ballabh Pant addressed two election meetings at Banaras on two different days during the election period. But Sri Samad's contention is that he had no concern with the meeting addressed by Pt. Nehru. Ram Ji Das P.W. 9 said that Pt. Jawaharlal Nehru in his election speech made pointed reference to Sri Abdul Samad and other candidates. But Mohammad Ayub D.W. 9 and certain other defence witnesses stated that Pt. Nehru did not refer to Sri Abdul Samad and other candidates. Pt. Nehru merely appealed for support to the Congress candidates. It is unlikely that the Prime Minister of India made personal reference to the candidates from Banaras. We accept the defence version that Pt. Nehru's speech was confined to a general appeal for support to Congress candidates. Further it has not been shown that Sri Samad incurred any expenditure for the meeting addressed by Pt. Nehru.

Defence witnesses admitted that Pt. Govind Ballabh Pant in his election speech made reference to Sri Abdul Samad candidate. Sri Samad admits that he paid a sum of Rs. 25 as his share of the expenses of that meeting. Ex. 1 is a copy of the return of election expenses of Sri Abdul Samad. It was noted in Ex. 1 that a sum of Rs. 25 was paid on 27th March 1952 to the City Congress Committee through Sri Raghunath Singh for Pant Ji's meeting. It is to be noted that this payment was made long after the day of the meeting and after the polling day.

Sri A. P. Pande contended that the public speeches made by the Chief Minister of U.P. in support of Sri Samad's candidature amounted to a major corrupt practice under sub-section (8) of section 123 R.P. Act 1951. No such plea was raised in paragraph 5(e) or elsewhere in the election petition. The point under consideration is whether respondent No. 1 incurred illegal expenses. For deciding this issue it is not necessary to decide whether the election speech delivered by the Chief Minister came within the prohibition of section 123(8) of the Act. We, therefore, refrain from deciding the somewhat difficult question whether an election speech made by a Minister from a public platform amounts to procuring assistance from a person serving under the State.

The question for determination under this issue is whether the sum of Rs. 25 paid by Sri Samad in March 1952 was illegal expenditure. Illegal expenditure has been dealt with in section 123(7) R.P. Act 1951. Section 123(7) is: "The incurring or authorising by a candidate or his agent of expenditure, or the employment of any person by a candidate or his agent, in contravention of this Act or of any rule made thereunder." The question is whether the payment of Rs. 25 was an expenditure in contravention of the Act or of any rule made under the Act. Sri A. P. Pande's argument was that the election meeting and the public speech by the Chief Minister amounted to a major corrupt practice under section 123(8) of the Act. So the expenditure incurred by Sri Samad in connection with the meeting amounted to illegal expenditure. It may be conceded that commission of a major corrupt practice, is in contravention of the Act. But the question remains whether the expenditure was also in contravention of the Act. Section 123 of the Act gives a list of major corrupt practices. Section 124 contains a list of minor corrupt practices. Section 125 deals with illegal practices. The consequence of commission of a major corrupt practice is more serious than the consequence of the commission of a minor corrupt practice or an illegal practice. If the wide interpretation of section 123(7) suggested by Sri A. P. Pande is accepted, there would

be curious result. Most corrupt practices and illegal practice involve expenditure of some kind. The result of the wide interpretation would be that although a certain transaction by itself is merely a minor corrupt practice or an illegal practice, the accompanying expenditure would convert that minor corrupt practice or illegal practice into a major corrupt practice under section 123(7). Such a result should be avoided if possible. The better interpretation of section 123(7) is to confine its operation to expenditure which is in itself in contravention of the Act or of any rule made under the Act, i.e. in contravention of some provision of Act about expenditure, or some rule about expenditure. For example section 77 of the Act and Rule 117 R.P. Rules 1951 contain a positive direction that no expense shall be incurred by a candidate in excess of the maximum amount specified in schedule V. If a candidate exceeds that limit, the expenditure would be in contravention of the Act and the Rules. The Act and Rules do not contain any direction that a candidate must not spend money for election meetings. The sum of Rs. 25 paid by Sri Samad as his share of the expenses of the election meeting was not expenditure in contravention of the Act or of the Rules. This expenditure does not fall within the prohibition contained in section 123(7).

It only remains to consider whether Sri Samad exceeded the limit of expenses specified in Schedule V. In Schedule V the maximum amount of election expenses for this Constituency has been fixed at Rs. 8,000. In his return of election expenses Sri Abdul Samad showed a total expenditure of Rs. 6,789/1/9. This expenditure was well within the maximum limit fixed by the Rules. It was however, urged on behalf of the petitioners that certain items admitted by the respondent ought to be shown in the return of election expenses. We have already referred to three items of expenditure of Rs. 1,001 Rs. 1,000 and Rs. 1,000, made by Sri Samad during 1951. Out of these three items only one item of Rs. 1,000 was expressly mentioned in the election petition. Sri A. P. Pande urged that the other admitted items of expenditure should also be considered against the respondent. He relied upon 'Amritsar City Case' (Indian Election Cases by Sen and Poddar, page 28). In that case it was held that an Election Tribunal is competent to enquire into a corrupt practice not mentioned in the petition but admitted by a party or agent to have been committed. We respectfully disagree. The procedure suggested by Sri A. P. Pande would go against the principle laid down by us in our order dated 21st November 1952. We shall therefore, confine our attention to the items of expenditure mentioned in the election petition and the schedules attached to the petition. We have already rejected the additional items of expenditure mentioned in the application 22-A. The sum of Rs. 25 paid by Sri Samad towards expenses of the election meeting was shown by him in his return of election expenses. The only additional items which have to be considered are the sum of Rs. 100 mentioned in Schedule B of the petition and the sum of Rs. 1,000 mentioned in paragraph 5(c) of the petition. We have already dealt with those two items under Issue No. 5. We have shown that it was not necessary to show those items of Rs. 100 and Rs. 1,000 in the return of election expenses. We are, thus, left with the amount of Rs. 6,789/1/9 which was the grand total shown in the return of election expenses. Even if we were to add the two items of Rs. 100 and Rs. 1,000, the total of Rs. 8,000 would still be less than the maximum limit of Rs. 8,000. Respondent No. 1 did not exceed the maximum limit of election expenses. We hold that respondent No. 1 did not incur any illegal expenses as alleged by the petitioners.

Issue No. 6.—It is said that the nomination paper filed by respondent No. 1 was in contravention of section 33(3) of R.P. Act 1951. Section 33(3) states: "Every nomination paper delivered under sub-section (1) shall be accompanied by a declaration in writing subscribed by the candidates that the candidate has appointed as his election agent for the election either himself or another person who is not disqualified under this Act for the appointment and who shall be named in the declaration, and by such other declarations, if any, as may be prescribed; and no candidate shall be deemed to be duly nominated unless such declaration is or all such declarations are delivered along with the nomination paper." Again, section 40(1) of the Act states: "Every person nominated as a candidate at an election shall before the delivery of his nomination paper under sub-section (1) of section 33 or under that sub-section read with sub-section (4) of section 39, as the case may be, appoint in writing either himself or some one other person to be his election agent." It was, therefore, argued that under these provisions the appointment of the election agent must take place before the delivery of the nomination paper, and there must be two separate documents for the purposes. In the present case Sri Abdul Samad filed six separate nomination papers (Exs. 57, 58, 60, 61, 62 and 63). In each of the six nomination papers Sri Samad mentioned on the back of the nomination paper that he had appointed himself as his election agent.

A similar question came up for our consideration in another case decided by us (Election Petition No. 270 of 1953—Deo Chand V. Vashisht Narain—decided on 4th May 1953). In that case we remarked that the language of section 33(3) shows that there should be a separate declaration in addition to the nomination paper. At the same time one cannot overlook the fact that the form of nomination paper has been prescribed under rule 4, and given in Schedule II of R.P. Rules 1951. The prescribed form provides for appointment of election agent also. Sri Samad used forms sanctioned by Schedule II of the Rules. In our opinion that was sufficient compliance with sections 33(3) and 40 of the Act.

Again, it was argued, that the form of appointment of election agent did not comply with the footnote given in the form. The footnote runs thus: "Only one election agent is to be appointed by a candidate. If more than one nomination paper is delivered by or on behalf of a candidate for election in the same constituency, the name of the election agent so appointed, whether such agent is the candidate himself or any other person, shall be specified in each such nomination paper." Sri A. P. Pande argued that since Sri Samad submitted as many as six nomination papers it was necessary to mention the name of the election agent appointed. Sri Samad merely noted that he had appointed himself as election agent. There is no force in this contention. There was no point in stating that Sri Samad was appointing Sri Samad as his election agent. The word "myself" used in the form left no ambiguity. We decide that the nomination paper of respondent No. 1 was not invalid. His nomination paper was properly accepted.

Issue No. 7.—The petitioners produced two witnesses on this point. Shailesh Chandra Dey, P.W. 10 was counting agent for Sri Kamla Kar Chaube candidate. Shailesh Chandra Dey stated that several boxes of one candidate were opened simultaneously. Seals were missing from most of the boxes. Several boxes remained unidentified. The outer label was missing for the majority of boxes. One box for Kamla Kar Chaube was missing. So counting of votes for Kamla Kar Chaube was left incomplete, and counting for another candidate was started. Shortage of boxes for certain candidates was made up by allotting unidentified boxes to those candidates. On 4th February 1952 Shailesh Chandra Dey filed an objection Ex. 38 pointing out that one box of Sri Kamla Kar Chaube was missing, and his other boxes were counted on 3rd February, 1952. Although in his statement before the Tribunal Shailesh Chandra mentioned several defects, his objection Ex. 38 was confined to one point only. He admitted that the missing box was discovered fifteen minutes after he had filed the written objection. There was no written complaint on behalf of this candidate on the 1st day of the counting. The witness proved a number of objections filed by Sri Murari Mohan De before the returning officer. Sri Murari Mohan De did not appear in the witness box in support of his objections. Ishwar Chandra Sinha, P.W. 12 was counting for Sri Murli Dhar candidate. Ishwar Chandra Sinha stated that at the time of counting of votes boxes were not counted; and boxes of different candidates were not separated at the commencement of the counting. For most of the boxes the shellac seal was broken. Many boxes were without the outer symbol. For some boxes paper seals were missing. Ishwar Chandra Sinha filed the two objections Exs. 40 and 48.

Sri Samad produced Sri Ram Nandan Prasad D.W. 19. He is a Deputy Collector at Banaras. He was the Returning Officer for Banaras City (North) constituency. He deposed that he observed all the rules regarding counting of the ballot papers. There was no objection regarding tampering of ballot boxes on behalf of any party. All the boxes of every candidate were accounted for. He admitted that there were some boxes, which could not be identified till they were opened. There were other boxes on which outer symbols were missing or on which the clerk had pasted wrong symbols. In some boxes the inner symbol was found loosely pasted.

At the time of the counting the Returning Officer made detailed notes of counting. These notes are Exs. 65 to 69. In Ex. 69 dated 3rd February 1952 the Returning Officer wrote: "All the ballot boxes were counted and checked. I am satisfied that all the ballot boxes used at the poll have been received and accounted for. All the ballot boxes allotted to each candidate were separated and all ballot boxes of each of the seven candidates were separately placed together." Ex. 41 was an objection filed by Sri Raja Ram candidate. In his objection it was mentioned that one ballot box had been lost. It was therefore suggested that fresh election should be ordered. On the back of Ex. 41 the Returning Officer passed the following order: ".....The total number of boxes is complete. It is only in respect of one box whose identity cannot be ascertained at present. . . . No objection was filed yesterday. But the candidates and their counting agents present here had consented to start counting of boxes of other candidates in spite of the fact that one of the boxes of Sri Kamla Kar Chaube candidate could not be identified....." A reference has already been made to the objections filed by Satish Chandra De and Ishwar Chandra Sinha.

Rule 46 R.P. Rules 1951 lays down the procedure to be followed at the counting of votes. Rule 46(5) states: "If the Returning Officer is satisfied that all the ballot boxes used at the poll have been received and are in order he shall take up the counting of ballot papers contained in the ballot boxes. The counting of all the ballot papers contained in the ballot boxes allotted to the same candidate shall be completed before the counting of the ballot papers contained in the boxes allotted to any other candidate is commenced....." In the present case it has been proved that when counting of votes for Sri Kamalakar Chaube was taken up on 3rd February 1952, one of his boxes could not be traced and identified. So counting of ballot papers for that box was held over, and counting of the votes for another candidate was taken up. The procedure adopted was against the directions contained in Rule 46(5). But all the candidates and their agents present at the counting consented to this procedure. So none of them can complain of it, which is only an irregularity.

The defects noticed at the time of the counting have been exaggerated by P.Ws. 10 and 12. The absence of symbols of certain boxes does not appear to have presented much difficulty in identifying these boxes. Each box carries several symbols. So even if one or two symbols are missing from a box it is still possible to identify that box. There was departure from Rule 46(5) R.P. Rules 1951. But this irregularity also does not appear to have had any serious consequences. The missing box was ultimately traced; and its contents were credited to Sri Kamalakar Chaube. There is no suggestion that all the ballot boxes of Sri Jhingan Sahu were not accounted for or that any extra votes were allotted to Sri Abdul Samad. We, therefore, hold that labels on certain boxes were missing, and there was contravention of Rule 46(5) R.P. Rules 1951. But these defects and irregularities were not of serious nature and have not effected the result of the election.

Issue No. 8.—This issue was not pressed by Sri A. P. Pande. The issue is decided against the petitioners.

Issue No. 9.—We have found that no illegal or corrupt practice has been proved against respondent No. 1. Some minor defects and irregularity of procedure were noticed under issue No. 7. But these defects were of a trivial nature. We have already pointed out that the confusion that arose at one stage with respect to one box of Sri Kamalakar Chaube did not affect the votes that had to be allotted to Sri Samad and Sri Jhingan Sahu. As the result of counting it was found that Sri Samad secured 19684 votes, while Sri Jhingan Sahu got 12262 votes. Thus Sri Abdul Samad won the election by a margin of 7422 votes. The minor irregularities noticed under issue No. 7 were by no means sufficient to wipe out this large margin of over seven thousand votes. We hold that the minor irregularities attending the counting of votes did not materially affect the result of the election.

Issue No. 10.—Mohammad Ayub (D.W. 9) and certain other defence witnesses stated that Sri Samad had given his workers instructions to avoid the commission of corrupt practices and irregularities. We have found that no illegal or corrupt practice has been established against respondent No. 1. Sri Samad was in no way responsible for the irregularities noticed under issue No. 7. Issue No. 10 is decided accordingly.

Issue No. 11.—Section 83 R.P. Act 1951 deals with the contents of an election petition. Section 83(1) states:—"An election petition.....shall be.....verified in the manner laid down in the Code of Civil Procedure 1908, for the verification of pleadings." Order VI Rule 15 deals with verification of pleadings. Order VI Rule 15(3) states:—"The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed." In the present case there is a verification at the foot of the election petition. But the date or of pleadings." Order VI Rule 15 deals with verification of pleadings. Order VI Rule 15(3), Civil Procedure Code. But the learned counsel for the respondent was unable to show that this defect in the verification prejudiced the respondent on merits. We, therefore, hold that although the verification of the election petition is defective, the defect is of technical nature. The petition ought not to be dismissed on that account.

Issue No. 12.—The petitioners have failed to establish any corrupt or illegal practice or any serious irregularity materially affecting the result of the election. So the election petition must be dismissed. The petitioners ought to pay the costs of respondent No. 1 which we assess at Rs. 600.

ORDER

The election petition is dismissed. Under section 99 R.P. Act 1951 we record that no corrupt or illegal practice has been proved against respondent No. 1. The petitioners shall pay respondent No. 1 Rs. 600 as costs. The petitioners are entitled to a refund of the balance (Rs. 400) of their security deposit of Rs. 1,000.

(Sd.) V. G. OAK, I.C.S.,—*Chairman.*

The 14th September, 1953.

(Sd.) N. N. MUKERJI,—*Member.*

(Sd.) BABU RAM AVASTHI,—*Member.*

ANNEXURE "A"

IN THE ELECTION TRIBUNAL AT ALLAHABAD

PRESENT:—

V. G. Oak, Esq.,—*Chairman.*

Sri N. N. Mukerji and Sri B. R. Avasthi—*Members.*

ELECTION PETITION NO. 243 OF 1952

Shiva Dass & another—*Petitioners.*

Vs.

Sri Sheikh Mohammed Abdul Samad & others—*Opp. Party.*

ORDER

These are two connected applications for incorporating certain particulars in schedules of the list attached to the election petition. Sri Shiva Dass and Sri Aditya Narain petitioners have filed the election petition challenging the election of Sri Sheikh Mohd. Abdul Samad respondent No. 1 from Banaras City (North) Constituency of U.P. Legislative Assembly. The election was held in 1952. It was pleaded in the petition that respondent No. 1 personally or through his agents arranged to obtain ballot papers in names of fictitious persons. Particulars of this charge are given in schedule A attached to the election petition. The petitioners have further alleged that the return of election expenses filed by respondent No. 1 is false. Particulars of this charge are given in schedule B attached to the election petition. On 20th September 1952 the petitioners moved two applications No. 9-C and 10-C requesting that, the further particulars given in these two applications should be incorporated in the said schedules A and B. The two applications were accompanied by an affidavit filed by Balkunth Nath Upadhaya to the effect that the petitioners had no knowledge of these further particulars at the time of the filing of the election petition. Respondent No. 1 has filed an objection 15-C against the two applications 9-C & 10-C.

The main question for consideration in this order is whether a petitioner can be allowed to give fresh instances or corrupt or illegal practice. We heard the learned counsel for the parties at great length. Sri A. P. Pande appearing for the petitioners relied upon Bombay City, 1924 Case reported in Hammond's Election Cases at page 173. It was held by the Election Commissioners that further instances of the same charges can be given by amendment of particulars.

On the other hand Sri Iqbal Ahmad and Sri R. N. Basu appearing for respondent No. 1 cited a large number of cases in support of the opposite view. It will be sufficient to quote a few of them. In 'Saharanpur, 1920 case' reported in Hammond's Election Cases at page 621 it was held that amendments and additions in the list of particulars cannot be allowed. Failure to furnish material facts and particulars involved dismissal of petition.

In 'Kistna, 1928 case' reported in Hammond's Election Cases at page 447 it was held that a petitioner must state at the outset the particulars on which his allegations are based. The court's power of amendment does not extend to adding a fresh instance not covered by the allegations in the petition.

In Akyub 1928 case reported in Hammond's Election Cases at page 45 it was held that particulars of charges can only be amended by amplification or the giving of further details. Where a petition gives no instances or particulars of a charge, these cannot be furnished later and no evidence can be adduced on it.

In North-West Gurgaon Mohammadan Constituency, 1946 case reported in the Indian Election Cases by Sen and Poddar at page 655 the Election Commissioners accepted the following propositions:

(b) that an amendment of the petition cannot be allowed;

- (c) that fresh instances of corrupt practice by way of replication or otherwise cannot be entertained;
- (d) that the petition must be confined to the particulars furnished;
- (e) that the particulars which are vague and indefinite as not to merit an enquiry should be struck off.

The previous cases were reviewed in Ferozepore Central Mohammadan Constituency, 1946, case reported in Indian Election Cases by Sen and Poddar at page 903. It was further observed that if the list of particulars were allowed to be amended by adding fresh instances to it, this would make it a supplementary or new list and thus defeat the provisions of the law requiring the petition as well as the list of particulars to be presented within the prescribed time.

The report of an order passed by a Division Bench of the Punjab High Court upon an application for writs of certiorari and mandamus has been published in the Hindustan Times dated 23rd August 1952. It appears that the matter related to a Municipal Election. The Election Commission which had to deal with the election petition refused to allow the petitioner to furnish further and better particulars. It was held by the High Court that the Election Commission had no jurisdiction to allow the petitioner to add instances of corrupt practices to those that he had given in his original petition.

A recent case decided by an Election Tribunal at Bombay has been published in the extraordinary issue of the *Gazette of India* dated 14th October 1952. The Tribunal held that there is no provision to file a fresh list but section 83(3) provides for the particulars included in the list to be amended. What the Act permits is not the amendment of the list. But the amendment of the particulars and that, too of the particulars included in the list.

It will be seen that in most of the decided cases it has been held that Election Commissioners cannot entertain fresh instances of corrupt practices by way of amendment of the election petition. Sri A. P. Pande urged that these cases were decided by Election Commissioners under the old law, and that these decisions are not good law under the Representation of People Act 1951. It was argued that the powers of an Election Tribunal under R.P. Act 1951 are wider than the powers of Election Commissioners under the old law. So we should exercise the power to amend an election petition, even if Election Commissioners under the old law did not possess such power. We have examined the statute law on elections that—was in force in India for about 25 years prior to 1951. It is true that the powers of Election Tribunals under R.P. Act 1951 are in some respects wider than the powers possessed by Election Commissioners under the old law. But we are not satisfied that the Legislature intended to make any radical change as regards the powers possessed by an Election Commission or an Election Tribunal as regards amendment of an election petition. Whether an election petition can be amended before an Election Tribunal depends upon the construction to be placed upon sections 83, 90 and 92 of R.P. Act 1951. On examining the previous law of elections, we find that even the previous law contained provisions similar to those contained in sections 83, 90(2) and 92 of R.P. Act 1951. When the Legislature enacted Representation of People Act 1951, the Legislature must have been aware of the decisions of Election Commissions during the last 25 years on the question of amendment of election petitions. There is nothing in R.P. Act 1951 to indicate that the Legislature did not approve of the view taken by most of the Election Commissions during the last 25 years as regards amendment of election petitions. We do not see sufficient ground for departing from what has been more or less settled law on the subject.

Section 83 R.P. Act 1951 deals with contents of petition. Section 83 states:—

- “(1) An election petition shall contain a concise statement of the material facts on which the petitioner relies and shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (Act V of 1908) for the verification of pleadings.
- (2) The petition shall be accompanied by a list signed and verified in like manner setting forth full particulars of any corrupt or illegal practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of each such practice
- (3) The Tribunal may, upon such terms as to costs and otherwise as it may direct at any time, allow the particulars included in the said list to be amended or order such further and better particulars in regard to

any matter referred to therein to be furnished as may in its opinion be necessary for the purpose of ensuring a fair and effectual trial of the petition."

Section 90 deals with procedure before the Tribunal. Section 90(2) states:

"Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the Tribunal, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits." Section 92 enumerated powers of the Tribunal. Certain powers appearing under the Code of Civil Procedure have been reproduced in the list given in section 92. Seven such items of powers have been detailed under Clauses A to G. The Tribunal may also summon and examine *sue motu* any person whose evidence appears to be material.

The power to amend an election petition has not been mentioned in section 92 R.P. Act 1951. If the list of powers given in section 92 is exhaustive, then obviously the Tribunal does not possess the power to allow amendment of an election petition. On the other hand, if the list contained in section 92 is not exhaustive, it is possible to argue that the power to amend is to be inferred from sub-section (2) of section 90 of this Act. It does not appear necessary to decide the subsidiary question whether the list of powers given in section 92 of the Act is exhaustive.

Rule 119 of the Representation of the People (Conduct of Elections and Election Petitions) Rules 1951, prescribes the time within which an election petition has to be presented. The period of limitation is 14 days from the date of publication of the notice about return of election expenses. It will be noticed that rule 119 prescribes a very short period of limitation for presenting an election petition. The applications for amendment are usually presented before Election Tribunals long after the filing of the election petitions before the Election Commission. If Election Tribunals could allow amendment of election petitions several months after the filing of election petitions, the procedure would be against the spirit of rule 119. It is common experience that litigation before Civil Courts drags on for a number of years. It is not desirable that the hearing of an election petition should drag on before in Election Tribunal as in ordinary Civil suits.

Section 83 of the Act contains three sub-sections. Sub-section (1) prescribes the contents of the main petition. Sub-section (2) prescribes the particulars to be given in the list that has to be attached to an election petition. Sub-section (3) explains in what manner alterations may be made in the list of particulars. Order VI of Civil Procedure Code deals with pleadings generally. Rule 4, of Order VI lays down that particulars have to be given where necessary. Rule 5 provides for further and better statement of particulars. Rule 15 provides for verification of pleadings. Rule 17 deals with amendment of pleadings. Order VI, rule 17 C.P.C. states:—

"The court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties".

It will be noticed that section 83, R.P. Act, 1951, follows the pattern of Order VI of Civil Procedure Code.

It is laid down in sub-section (2) of section 90, R.P. Act, 1951, that, every election petition shall be tried by the Tribunal in accordance with the procedure applicable under the Code of Civil Procedure to the trial of suits. But this direction is subject to qualification. The expressions "subject to the provisions of this Act and of any rules made thereunder", and "as nearly as may be" suggest that, the Tribunal does not possess all the powers conferred upon a Civil Court. We are inclined to think that, this Tribunal cannot issue a temporary injunction, or appoint a Receiver, or attach property before judgment. This Tribunal cannot entertain an election petition directly. An election petition has to be filed before the Election Commission. The Election Commission forwards the election petition to the Election Tribunal. There is, therefore, reason to suppose that, subject to the provisions of this Act and rules made under the Act, the Election Tribunal has to try the election petition as received from the Election Commission. It is to be presumed that only such powers have been conferred upon this Tribunal as are properly needed for hearing and disposal of election petitions. Sri A. P. Pande strongly urged that, this Tribunal possesses the power of amendment of pleadings under Order VI, Rule 17 C.P.C. On the other hand Sri Iqbal Ahmad argued that, an election petition cannot be

amended as provided under Order VI, Rule 17, C.P.C. It is settled law that, a Civil Court possesses wide power to amend pleadings under Order VI, Rule 17, C.P.C. A plaint may be amended even at the stage of an appeal. If an Election Tribunal has the same power of amendment of pleadings as a Civil Court possesses under Order VI, Rule 17, C.P.C., there was hardly any necessity of making a special provision for making alterations in the list of particulars under sub-section (3) of section 83 of the Act. It seems to us that, an election petition must comply with section 83 of the Act, that alterations cannot be made except as permitted under sub-section (3) of section 83, and that an Election Tribunal does not possess the power to permit an amendment of the election petition under Order VI, Rule 17, C.P.C.

Lastly, we have to examine the exact scope of alterations which are permitted under sub-section (3) of section 83 of the Act. The first thing to be noticed is that, throughout sub-section (3) the reference is to alterations in the list of particulars. Sub-section (3) does not contemplate alterations in the main election petition. Again the Tribunal may permit alterations in the list of particulars in two ways:—

- (1) "Allow the particulars included in the said list to be amended."
- (2) "Order such further and better particulars in regard to any matter referred to therein."

The second phrase presents little difficulty. The second phrase itself covers two sub-heads: (1) further particulars, and (2) better particulars. Suppose, the charge mentioned in the list of particulars is that, Ram Singh paid Bhagwan Prasad Rs. 30 as bribe. If the place of payment is not mentioned in the original list, the Tribunal may permit the petitioner to mention the place subsequently. That would be giving further particulars. Ram Singh is a very common name. In order to fix the person, the Tribunal may permit the petitioner to specify subsequently that, Ram Singh is son of Kirpa Narain. That would amount to giving better particulars.

There was much controversy about the meaning of the phrase, "allow the particulars included in the said list to be amended." According to Sri A. P. Pande, this phrase enables a petitioner to quote fresh instances of the same charge. That is to say, if the original list mentions three instances of bribery, the petitioner may subsequently quote two more instances of bribery. Sri Iqbal Ahmad argued that, such a course is not permissible under sub-section (3). It is to be noted that, the phrase under discussion does not permit amendment of every sort. What is permissible is amendment of "the particulars included in the said list." That is to say, if certain instances of corrupt or illegal practices have been given above it was originally mentioned in the list that, the amount paid as bribe was Rs. 30. Later, the petitioner comes to know that, the amount paid was Rs. 20 and not Rs. 30. The tribunal may permit the petitioner to substitute the figure Rs. 20 for figure Rs. 30. This would amount to amendment of particulars permissible under the phrase "allow the particulars included in the said list to be amended." The phrase does not permit introduction of wholly new matter. Fresh instances of illegal or corrupt practices cannot be furnished by way of amendment.

After a careful consideration of the provisions of sections 83, 90 and 92 of R.P. Act, 1951, and the case law on the point, and bearing in mind the necessity of disposing of election petitions with expedition, we have arrived at the following conclusions:

(1) Generally speaking, an election petition has to be tried by the Tribunal according to the procedure prescribed under the Code of Civil Procedure to the trial of suits. But an Election Tribunal does not possess all the powers conferred upon a Civil Court by the Code of Civil Procedure.

(2) A petitioner cannot invoke the aid of Order VI, Rule 17, C.P.C. in order to amend an election petition or the list attached to the petition.

(3) An election petition as such cannot be amended.

(4) The list attached to an election petition may be amended only as permitted under sub-section (3) of Section 83 of the Act. Amendment of the list must not lead to amendment of the election petition itself.

(5) Fresh instances of illegal or corrupt practices cannot be entertained by the Election Tribunal.

The two applications by the petitioners may now be disposed of on the principles laid down above. By application (9-C) the petitioners seek to amend schedule A of the list. Schedule A of the list gives one instance of personation. The petitioners

now want to give two more instances of personation. False personation is a major corrupt practice under section 123. The petitioners cannot be permitted to give two such fresh instances of false personation. In application (10-C) the petitioners seek to amend schedule B of the list. It is mentioned in Schedule B that the respondent No. 1 paid a sum of Rs. 100, but this expenditure was not shown in the return of expenses. The petitioners now want to give six more items of expenditure not shown in the return of expenses. The making of a false return of election expenses is a minor corrupt practice under sub-section (4) of section 124. It was necessary to give these particulars in the list attached to the election petition. The petitioners cannot be allowed to give fresh instances of corrupt practices as is sought in the two applications.

In the result the two applications (9-C and 10-C) are dismissed.

(Sd.) V. G. OAK, I.C.S., *Chairman,*

(Sd.) BABU RAM AVASTHI,—*Member.*

The 21st November, 1952.

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(Sd.) N. N. MUKERJI,—*Member.*

Sri A. P. Pande assisted by Sri S. K. Srivastava, Sri Sahdeo Singh, Sri Murari Mohan Dey and Sri S. D. Pande appeared for the petitioners.

Sri R. N. Basu, assisted by Sri G. N. Kunzru, Sri Balram Lal Srivastava and Sri Gopi Krishna appeared for respondent No. 1.

[No. 19/243/52-Elec.III/3921.]

By Order,

P. R. KRISHNAMURTHY, Asstt. Secy